

Message Text

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ACTION L-03

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FM AMCONSUL MUNICH
TO SECSTATE WASHDC IMMEDIATE 9995
AMEMBASSY BONN

C O N F I D E N T I A L MUNICH 01206

SECSTATE PASS TO FOREIGN CLAIMS SETTLEMENT COMMISSION
BONN FOR PFUND

FROM CHARIG, AMCONSUL MUNICH

E.O. 11652: GDS
TAGS: CPRS, PGOV, GW, GF, US
SUBJECT: OVERLAPPING CLAIMS

REF: (A) STATE 054306; (B) MUNICH 01183

1. WHILE I REALIZE I AM NOT RPT NOT ACTION ADDRESSEE,
WISH TO COMMENT BRIEFLY ON REFTEL A.
2. IT APPEARS REFTEL A REFLECTS DESIRE FOR PROMPT LIFTING
OF CURRENT W. GERMAN STOP ON DECISIONS AND PAYMENTS FOR
ALL AMERICAN CLAIMANTS. THIS IS URGENT AND MERITORIOUS
GOAL. I WISH TO HELP ACHIEVE IT, IF I CAN. HOWEVER IT
ALSO APPEARS TO REFLECT VIEW THAT GERMAN LAWS PROVIDING
FOR RECOUPMENT NOT RPT NOT EQUITABLE OR JUSTIFIED,
AND THAT CLAIMANTS RECEIVING PAYMENTS FROM BOTH SIDES
SHOULD REPAY ONLY IF THEIR RECOVERY EXCEEDS 100 PERCENT.
IT SEEMS SOME MISCONCEPTIONS CREPT INTO CONSIDERATION OF
PROBLEM.

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- A) GROUP OF AMERICAN CLAIMANTS WHO MIGHT COLLECT FROM
BOTH SIDES IS BELIEVED TO BE ONLY SMALL PERCENTAGE OF THOSE
NOW AFFECTED BY THE STOP. HIGH PRIORITY SHOULD GO TO
LARGER GROUP.
- B) NEITHER PL 94-542 NOR GERMAN LAWS KNOW THE CONCEPT

OF RECOVERY UP TO 100 PERCENT OF DAMAGE; RATHER BOTH LAWS PROVIDE THAT DAMAGE (NOT RPT NOT PAYMENT) MUST BE REDUCED BY PAYMENT RECEIVED FROM OTHER SOURCE FOR SAME DAMAGE.

- C) GERMAN LAW (BFG) PROVIDES COMPENSATION FOR GDR LOSSES, NOT RPT NOT LOSSES DUE TO NAZI MEASURES. HOWEVER BFG GIVES FAVORABLE STATUS TO PERSECUTEES WHO ELIGIBLE ALTHOUGH THEY DO NOT RPT NOT MEET NORMAL RESIDENCE REQUIREMENTS OF BFG.

- D) I BELIEVE FRG AUTHORITIES HAVE AUTHORITY AND MEANS OF ENFORCING RECOUPMENT FROM "DOUBLE RECIPIENTS" (SEE ERICH ROSENTHAL CASE, PAR. 6 REFTEL B) REGARDLESS OF POSSIBLE ARRANGEMENT THAT MIGHT BE WORKED OUT.

- E) CALCULATION OF REIMBURSEMENT SHOULD BE STUDIED FROM VARIOUS EXAMPLES. HERE IS ONE: ASSUME W. GERMANS CALCULATE THE DAMAGE OF AN AMERICAN CLAIMANT AT DM 100,000 (TAKING TAX ASSESSED VALUES) AND PAY HIM DM 44,400 INCL INTEREST, FCSC WOULD PROBABLY ARRIVE AT DAMAGE FIGURE OF (DM EQUIVALENT TO MAKE IT COMPARABLE) DM 200,000 (MARKET VALUES), DEDUCT DM 44,400 UNDER SEC. 605, ARRIVE AT AWARD OF DM 155,600. NOW ASSUME THE GDR FUND (IF ANY) ALLOWS PAYMENT OF 20 PERCENT OF AWARD OR DM 31,120. SUCH PAYMENT MUST LATER BE DEDUCTED FROM GERMAN DAMAGE UNDER BFG, WHICH BECOMES 68,880 INSTEAD OF 100,000, WHICH REDUCES GERMAN PAYMENT TO 39,800. GERMANS PREVIOUSLY PAID
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44,400 AND WOULD EXPECT REFUND OF 4,600. CLAIMANT KEEPS 39,800 FROM W. GERMANS AND ALL OF PL 94-542 PAYMENT; THUS HE RECEIVED 70,920, OF WHICH 39,800 WERE FROM W. GERMANS. (DISREGARD FOR THE MOMENT THE SENTENCE IN PAR. 3 OF REFTEL B STARTING "THEY WOULD THEN BE WORSE OFF....")

3. MAY I SUGGEST THAT REFTEL A BE REVIEWED OR RECONSIDERE IN LIGHT OF ABOVE, THAT PROBLEM BE STUDIED FURTHER AND THAT MEETING WITH FRG EMB IN WASH DC BE POSTPONED SO AS NOT TO CREATE FAIT ACCOMPLI. BETTS

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